IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 345 OF 2007
IN
CRIMINAL APPEAL NO. 288 OF 2007

Nityanand Manikam Devendra ..Applicant
(Org.Accd.No.2)

Vs.

The State of Maharashtra ..Respondent

Mr. Vaibhav Bagade for applicant.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 05, 2007.

P.C.:

1. Heard Mr. Bagade the learned counsel for the applicant who has filed Criminal Appeal No. 288 of 2007 against his conviction and sentence in Sessions Case No. 303 of 1999.

2. In Sessions Case No. 303 of 1999 there were in all seven accused and as accused no.7 was absconding for some time, his trial was separated and on his arrest trial was continued in Sessions Case No. 306 of 2005. The names of these seven accused are as under:-

(i) Appu @ Appuswami Ramswami Devendra

(ii) Nityanand Manikam Devendra

(iii)Nityanand Chalappa Devendra

(iv) Ramswami Chalappa Devendra

(v) Raju Ramswami Devendra

(vi) Ramchandra @ Ravi Tukaram Avdhade

(vii)Shrinivas @ Sunil Chalappa Devendra

3. Criminal Appeal No. 288/07 has been filed by accused no.2, Criminal Appeal No. 348 of 2006 has been filed by accused nos.4 and 5, Criminal Appeal No. 1232 of 2006 has been filed by accused nos.1 and 3 and Criminal Appeal No. 331 of 2007 has been filed by accused no.7, whose trial was separated initially. It is thus clear that accused no.6 - Ramchandra @ Ravi Tukaram Avdhade has not filed any appeal as of now. Initially in support of this bail application Mr. Bagade had relied upon the orders passed by this court in Bail Application No. 75/07 and Bail Application No. 402/07. In both these applications accused no.1, accused no.3 and accused no.7 came to be released on bail and, therefore, in terms of parity the learned

counsel had placed reliance on both these orders. However, Mr. Adsule the learned APP referred to the order passed on 7/6/2006 in Bail Application No. 385/06 in Criminal Appeal No. 348/06 whereby the plea of bail was rejected in respect of accused nos.4 and 5. These two accused had thereafter filed Bail Application No. 770/07 and had relief upon the orders passed in Bail Application Nos.75 and 402 of 2007. However, Bail Application No. 770/07 came to be rejected on 16/8/2007 specifically noting that when the Bail Application Nos.75 and 402 of 2007 were heard and allowed, it was not brought to the notice of this court that Bail Application No. 385 of 2006 filed in Criminal Appeal No. 348 of 2006 was rejected on 7/6/2006. This court, therefore, rejected Criminal Application No. 770/07 on 16/8/2007 on the grounds that the applicants' earlier Bail Application registered as Bail Application No. 385/06 was rejected on merits on 7/6/2006. Mr. Bagade, therefore, gave up the plea of parity and proceeded to argue the application on merits.

4. He referred to the depositions of PW 1, PW 2

and PW 3 who were claimed to be the eye witnesses by the prosecution and pointed out that none of these witnesses have either identified or spoken anything about accused no.2 Nityanand Manikam Devendra attributing any role to him in the crime. Having gone through the depositions in the examination-in-chief as well as the cross-examination, the submissions made by the learned counsel, prima facie, appear to be supporting his case. Mr.Adsule, the learned APP at this stage referred to the averments made in the affidavit in reply opposing this application and pointed out that after the applicant was released on bail during trial, two more offences came to be registered against him with the Antop Hill Police Station, Mumbai i.e. C.R. Nos.35 and 71 of 2003 for the offence punishable under Section 379 of IPC. Mr. Bagade pointed out that C.R Nos.35 and 71 of 2003 has not been registered against the present applicant alone and it is clear from the written instructions received by the learned APP that accused no.3 i.e. Nityanand Chalappa Devendra is also involved in the said CRs.

5. Having regards to the testimony of PW 1, PW 2 and PW 3 the application will have to be allowed though the plea of parity is not available to the applicant.

6. Hence, the application is allowed and it is directed that the applicant be released on bail on same terms and conditions as per before the trial court but on furnishing fresh bonds and depositing the fine amount and in addition he shall report to the Antop Hill Police Station, Mumbai once in a week between 5 p.m. to 7 p.m. (this condition has been imposed by considering the affidavit filed by Shri Anant Vithal Inarkar, PSI that the applicant has no permanent residence in Mumbai) till the appeal is finally decided and he shall not leave Mumbai City unless he has written permission from the Sr.P.I. of the said Police Station.

(B.H. Marlapalle,J.)